HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1332 of 2001
(Old No. 1435 of 1988)

Gopal Singh …….. Appellant

Vs.

State of Uttaranchal …….. Respondent

Sri R.S. Sammal learned counsel for the appellant.
Sri A. Rab, Addl. G.A. for the State.

Hon'ble Irshad Hussain, J.
Hon'ble J.C.S. Rawat, J.

This is a criminal appeal under Section 374 of the Code of Criminal Procedure (for short 'Code') against judgment and order dated 31.5.1988 passed by the Ist Addl. Sessions Judge, Nainital in S.T. No. 219/1987 convicting the appellant under Section 302 IPC and sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution, in brief, was that the PW1 Hosiyar Singh-maternal uncle of the appellant filed written report (Ex.ka.1) at the police station Khatima. Smt. Thaguli Devi-deceased was married with Diwan Singh. She had three sons namely, Gopal Singh-appellant, Trilok Singh and An Singh. Diwan Singh was serving in M.E.S. Charma, Didihar in district Pithoragarh. In the year 1972, Diwan Singh purchased about one acre of land and constructed a house and Smt. Thaguli Devi was residing in the same house on the fateful night. The appellant-Gopal Singh and his brother Trilok Singh was residing with deceased-Thaguli Devi. The relations between Diwan Singh and Smt. Thaguli Devi were strained.

3. On 6.1.1987 appellant-Gopal Singh wanted to take his mother to Didihat for living with his father. The bus become out of order and the accused refused to go by another bus to Didihat on the pretext that why

Devta had chased the bus and the appellant started behaving in abnormal manner. Thereupon, Smt. Thaguli Devi-deceased returned to her house. On 7.1.1987, the accused went to a temple for several times. On 8.1.1987 An Singh went to the complainant and asked him that Gopal Singh was worshiping the God and tying to kill them. Thereafter PW1 Hosiyar Singh alongwith Pratap Singh (PW2) and Diwan Singh (PW3) reached at house of Smt. Thaguli Devi at about 7AM where the appellant-Gopal Singh were found sitting inside the house. On being made enquiry about Smt. Thaguli Devi, the appellant informed them that at mid night he cut the neck of his mother. Taking the head he took bath in the Sharda canal and offered the head alongwith Darati and two rupees note in the temple and the dead body had been concealed in the kitchen of Khushal Ram. The accused also told that he had thrown the blood stained clothes in the Sharda river. The appellant also showed the head of the deceased, Darati and two rupees note to the complainant.

4. The FIR (Ex.ka.7) was lodged on 8.1.1987 at about 10:50 AM at the police station Khatima and the entry in the general diary was made, the copy of which is Ex.Ka.8 and the police registered the case against the appellant under Section 302 IPC. S.I. Pooran Chandra Pandey (PW6) started the investigation of the case and recorded the statement of the witnesses and the accused and prepared the inquest report (Ex.ka.4) and connected papers (Ex.ka.12 to ka.16). He sealed the dead body and prepared sample of seal (Ex.ka.17) and sent the dead body for postmortem to District Hospital, Pilibhit. On the pointing out of the accused he recovered headless body of the deceased from the hut of Khushal Singh and recovered the head of the deceased, one Darati and one two rupees note from the temple. He also prepared the site plan which is Ex.ka.9. He took the blood stained earth and simple earth from both the places and prepared memos (Ex. Ka. 10 to ka. 11). The sample of blood stained earth and Darati were sent for chemical examination to Agra and after completing the investigation he submitted the charge sheet (Ex.ka. 5) against the accused under Section 302 IPC.

5. The appellant was charged under Section 302 IPC but he denied the charge and claimed the trial.

6. The prosecution in support of the case examined PW1 Hosiyar Singh, PW2 Pratap Singh, PW3 Diwan Singh, PW4 Narayan Singh, PW5 Ganesh Datt and PW6 S.I. Pooran Chandra Pandey (I.O.).

7. On 9.1.1987, autopsy was conducted by Dr. V.K. Tandon. The medical officer in postmortem report (Ex.ka.18) found the following ante mortem injuries:-

i) Awsoportrior incised wound with ragged margins starting from 3 cm below the chin upto subocciptal region of back of scalf at the level of 5th clvical vertibra over neck 15 cm x 11 cm whole thickness of neck. Cutting underneath muscle, vessels, tratia, occophagus, vessel, 5th clavical vertibra bare at the junction of 6th veteba. Spinal cord and nervs.

ii) Incised wound 1 cm x 0.3 cm x muscle deep 1.5 cm above and outer part of left upper lip.

iii) Incised would 1 cm x ½ cm x bone deep at the angle of left mouth.

iv) Incised would 1.5 cm x ½ cm x bone deep on the left chinna.

v) Incised would with ragged margin one the lower part of neck connected with truck at the level of upper border of 6th cervical vetebra 15 cm x 1 cm x through and through corresponding to the injury No.1.

In the internal examination the Medical Officer found that verticbra cut between cervical 5th & 6th verticura. Treachea cut at the level of cervical 5th vertibra. Ocsophagus cut at the cervical 5th vertibra level. Stomach was empty. In the opinion of Medical Officer the cause of death was shock and

haemorrhage as a result of ante mortem injuries. The postmortem report is Ex.Ka. 18.

8. We have heard the learned counsel for the appellant and Addl. G.A. Perused the record.

9. PW1 Hosiyar-complainant, who was the brother of the deceased lodged the FIR at the police station Khatima and deposed that on 7.1.1987 his sister's son An Singh came to him and told that the appellant was threatening them to kill. Hosiyar Singh, Pratap Singh, Dewan Singh, Narayan Singh and Ganesh Datt, before whom the confessional statement was made by the accused, reached at the house of the Smt. Thaguli Devi. The prosecution produced PW1 Hosiyar Singh, PW2 Pratap Singh, PW3 Diwan Singh, PW4 Narayan Singh and PW5 Ganesh Datt to prove the extra judicial confession made by the appellant on 8.1.1987. These witnesses deposed that the appellant never made any confessional statement to them. All these witnesses were declared hostile by the prosecution. They did not support the prosecution version.

10. There was no direct evidence in the case who could depose that they had seen the occurrence. There was no case of the prosecution that there was any eye witness of the case.

11. Now, we have to examine the circumstantial evidence on record as to whether it is sufficient to convict the appellant under Section 302 IPC. According to FIR, Mr. An Singh-the son of the deceased informed his maternal uncle Hosiyar Singh in the morning of 8.1.1987 that his brother Gopal Singh (appellant) was in abnormal condition and was threatening to kill them. Mr. An Singh was living in the same house on the day of incident. He was the only person who could have deposed that the deceased was lastly seen in the company of the appellant. He could had deposed that the appellant caught hold of the neck of the deceased when he saw them lastly. The evidence of Mr. An Singh was an important piece to establish the charge of murder against the appellant.

12. In view of the above discussions, we are of the view that there was no direct evidence on record toe establish the guilt against the appellant. The prosecution could not prove the extra judicial confession of the appellant made to the prosecution witnesses to commit the murder of the deceased. The prosecution failed to produce the evidence of An Singh, who was present on the fateful night with her mother (deceased) and appellant in the same house. There was no direct or circumstantial evidence to prove the guilt against the appellant-Gopal Singh. The learned Judge erred in holding that the prosecution had established the guilt against the accused beyond reasonable doubt.

13. The prosecution has failed to prove the charge against the appellant, therefore, the appellant deserve to be acquitted of the charge levelled against him. Under these circumstances, the impugned order dated 31.5.1988 cannot be sustained.

14. The appeal is allowed. Conviction and sentence awarded to the appellant per judgment dated 31.5.1988 passed by Ist Addl. Sessions Judge, Nainital are set-aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

(J. C. S. Rawat, J.) **(Irshad Hussain, J.)**

Dated 17th July, 2004
Rawat